

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

LEVEL 3 COMMUNICATIONS, LLC, )  
                                      )  
Plaintiff,                      )  
                                      )  
v.                                 ) Civil Action Number: 5:02-cv-2055-VEH  
                                      )  
CITY OF HUNTSVILLE, ALABAMA, )  
                                      )  
Defendant.                     )

**NOTICE OF APPEAL**

Notice is hereby given that defendant City of Huntsville, Alabama, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the portion of the final judgment entered in this action on May 17, 2005, granting summary judgment to plaintiff Level 3 Communications, LLC, and denying summary judgment to defendant City of Huntsville, Alabama, with respect to the claim for declaratory relief in Count I of the amended complaint relating to whether the rights-of-way use fees at issue in this action are a tax under Alabama law.<sup>1</sup>

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<sup>1</sup> Defendant City of Huntsville, Alabama, files this notice of appeal out of an abundance of caution notwithstanding its pending motion to alter or amend under rule 59(e) of the Federal Rules of Civil Procedure, which was timely filed on June 1, 2005, solely to ensure that its right of appeal as to this specific summary-judgment ruling is preserved.

/S/ Michael L. Fees

Michael L. Fees

Alabama State Bar Number: ASB-4924-F51M

/S/ C. Gregory Burgess

C. Gregory Burgess

Alabama State Bar Number: ASB-1519-R79C

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## CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June, 2005, I electronically filed the foregoing with Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

J. MARK WHITE  
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and I hereby certify that a copy of the foregoing has been served by depositing a copy in the United States Mail, first class, postage prepaid, addressed to the following non-CM/ECF participants:

T. SCOTT THOMPSON  
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/S/ C. Gregory Burgess  
C. Gregory Burgess